

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: September 12, 2017

☐ Consent ☒ Regular
☐ Public Hearing

Department:

Submitted By: County Attorney

Submitted For: County Attorney

I. EXECUTIVE BRIEF

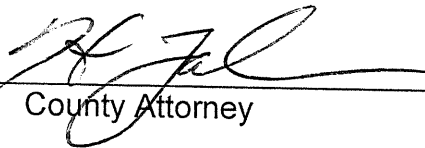
Motion and Title: Staff recommends motion to: approve an Agreement for Legal Services ("Agreement") with Kaplan, Kirsch and Rockwell, LLP with a not-to-exceed contract amount of \$200,000 for expert aviation legal services and \$22,500 for reimbursable out-of-pocket expenses, for a total not-to-exceed contract amount of \$222,500 with an initial term of 2 years, beginning September 12, 2017.

Summary: This Agreement provides for expert aviation legal services to be provided by Kaplan, Kirsch and Rockwell, LLP to the County Attorney on various legal matters, including the defense of County in a 14 Code of Federal Regulations, Part 16 complaint concerning jet restrictions at Palm Beach County Park Airport ("Lantana Airport"). The Agreement commences September 12, 2017 and is limited to an amount not-to-exceed \$222,500, which includes reimbursable out-of-pocket expenses. As a cost-savings measure, the Agreement provides that the County Attorney's Office will perform all routine legal services not requiring expertise in aviation law, such as drafting discovery, defending/taking depositions. Countywide (AH)

Background and Policy Issues: On August 10, 2017, Captain Errol Forman filed a complaint with the Federal Aviation Administration ("FAA"), pursuant to 14 Code of Federal Regulations, Part 16, concerning jet restrictions at Lantana Airport. Kaplan, Kirsch and Rockwell is a national law firm that specializes in aviation law, including airport related noise issues, and has successfully represented the County in other aviation-related litigation. Peter Kirsch, from Kaplan, Kirsch and Rockwell has been providing consulting services to the County prior to the filing of this Part 16 complaint on issues related to jet restrictions at Lantana Airport. With the filing of the Part 16 complaint, the County has 40 days after docketing by the FAA to submit its formal response to the FAA, so a legal services agreement with Kaplan, Kirsch and Rockwell is needed to assist the County in defending the Part 16 complaint.

Attachments:

1. Agreement between Palm Beach County and Kaplan, Kirsch and Rockwell, LLP for Legal Services

Recommended By:  8/22/17
County Attorney Date

Approved By: _____
N/A

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Operating Costs	\$222,500				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	\$222,500				
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No

Budget Account No.: Fund 4100 Department 120 Unit 1110 Object3125

Reporting Category_____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Approval of this item authorizes a not to exceed amount of \$222,500 which is currently budgeted in the above referenced account, funded by Airport revenues.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

✓ 8/23/17 *[Signature]* 8/23/17
OFMB

Joe J. Jacoby 8/29/17
Contract Development and Control
8/29/17 *Joe*

B. Legal Sufficiency:

Anne Delmont 8-30-17
Assistant County Attorney

C. Other Department Review:


Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.

**AGREEMENT BETWEEN PALM BEACH COUNTY AND
KAPLAN KIRSCH & ROCKWELL LLP FOR LEGAL SERVICES**

This Agreement for Legal Services ("Agreement") is made and entered into on this _____ day of _____ 2017, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County", and Kaplan Kirsch & Rockwell LLP, hereinafter referred to as "Attorney".

WITNESSETH:

WHEREAS, County desires to retain the legal services of Attorney for purposes of defending the County in a Part 16 complaint concerning jet restriction at Palm Beach County Park Airport ("Lantana Airport"); and

WHEREAS, Attorney desires to provide legal services to County to defend the County in a Part 16 complaint.

Now, Therefore, in consideration of the mutual covenants and agreements expressed herein the parties agree as follows:

1. County hereby retains Attorney for advice, representation, and assistance to the County Attorney on various legal matters, including, but not limited to the defense of County in a 14 Code of Federal Regulations, Part 16 complaint concerning jet restrictions at Lantana Airport, in which an expert aviation attorney is deemed necessary by the County Attorney, hereinafter "Legal Services". Attorney shall perform Legal Services as may be requested by the County Attorney or her designee.
2. The lawyer primarily handling this matter on behalf of Attorney is Peter Kirsch, Esq, who will be assisted by other partners and associates as needed.

3. When practicable and consistent with Attorney's professional obligations, Attorney shall coordinate with and give direction to the County Attorney or her designee, so the County Attorney can provide routine legal services in connection with the case as a cost-savings measure. Examples of routine legal services that may be provided by the County Attorney or designee under the coordination and direction of Attorney include but are not limited to, routine appearances at motion hearings, drafting discovery requests, reviewing discovery responses, taking/defending depositions, routine legal research and the development of hearing exhibits.
4. (a) County shall pay Attorney for Legal Services rendered on a per hour basis as set forth in Exhibit "A", attached hereto and incorporated herein by reference, a total amount not-to-exceed Two Hundred Thousand Dollars (\$200,000). Monthly bills shall be submitted by Attorney to the County Attorney's office for review and approval prior to payment. Each item shall be set forth separately, specifically describing the work performed, and reflecting the actual time spent on each such matter. Attorney shall bill County for work performed in tenth of an hour increments. Attorney shall notify County when the billable fees and costs reach ninety (90%) percent of the not-to-exceed amount provided for herein. Notification shall be made as soon as practicable and prior to the next monthly invoice.

(b) It is anticipated that Attorney will attempt whenever possible to achieve cost effectiveness by consolidating hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of attorney or staff experience required by task and taking other actions to improve efficiency.

(c) Multiple staffing of attorneys at meetings and depositions by Attorney will not be compensated unless prior written approval has been obtained from the County Attorney.

5. (a) County agrees to reimburse Attorney for reasonable out-of-pocket expenses and costs incurred during the course of providing Legal Services. The expenses and costs may include, but are not limited to, out of pocket expenses for extraordinary photocopying projects, not to exceed fifteen cents (\$.15) per page, courier charges, express mail, long distance telephone charges, postage and printing. County will only reimburse Attorney out-of-pocket expenses that have previously been approved in writing by the County Attorney's Office. Court filing fees and costs, witness fees, and previously approved travel shall be itemized and invoiced separately.
- (b) County shall not be responsible for the cost of any computerized legal research other than the actual billable hourly rate of Attorney.
- (c) Fees and costs of experts employed in the course of the litigation are not included as such experts shall enter into a separate agreement with the County.
- (d) The total amount of reimbursable out-of-pocket expenses and costs shall not exceed Twenty-Two Thousand Five Hundred Dollars (\$22,500). The reimbursable out-of-pocket expenses and costs provided for in this section are in addition to the total not-to-exceed Agreement amount provided for in section 4(a) of this Agreement.
- (e) Attorney covenants and agrees that any other type of billing or timekeeping which allows compensation for the time not actually spent by Attorney is not permitted under this Agreement. Therefore, it shall be a material breach of the terms of this Agreement for Attorney or anyone on Attorney's behalf to submit for payment any statement of services rendered that either (1) overstates the amount of time actually spent pursuant to this Agreement, or (ii) includes time spent by a person not affiliated with Attorney.

(f) Each statement of costs and fees represents an implied warranty that the statement sets forth only the actual time spent and only the actual costs incurred. The County may rely on the implied warranty.

6. All requests for payment of expenses eligible for reimbursement under this Agreement shall include copies of paid receipts, invoices, or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expenses were actually incurred and necessary in the performance of the Legal Services. Photocopy charges shall describe the documents, purpose of duplication and rate charged. Any out-of-county and related travel, per diem, mileage, meals, or lodging expenses which may be reimbursable under the terms of this Agreement shall be approved by the County Attorney's Office, in advance, and shall be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes, and all applicable policies and procedures established by the Board of County Commissioners.
7. Attorney shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the Legal Services for a least three (3) years after termination of this Agreement. County shall have access to such books, records and documents as required in this section for the purpose of inspection and/or audit during normal business hours, at County's expense, upon five (5) days written notice.
8. This Agreement may be terminated by County upon written notice to Attorney, and termination shall become effective upon receipt of the notice. This Agreement may be terminated by Attorney upon sixty (60) days written notice to County so long as such termination is consistent with Attorney's professional obligations. Upon termination by either party, Attorney shall transfer all work in progress, completed work, and other materials related to the Legal Services to County.

9. (a) Attorney shall provide periodic status reports, either orally or in writing, as requested by the County Attorney or designee.
- (b) Attorney shall deliver to the County Attorney's Office for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for County in the course of providing the Legal Services.
- (c) All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by County or at its expense shall be kept confidential by Attorney and shall not be disclosed to any other party, directly or indirectly without County's prior written consent unless required by an order issued by a court or like authority of lawful jurisdiction. All drawing, maps and sketches and other data developed or purchased under this Agreement or at County's expense shall be and remain County's property and may be reproduced and reused solely at the discretion of County.
10. (a) Attorney shall, at its sole expense, maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. Attorney shall provide County with at least ten (10) days prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as County's review or acceptance of insurance maintained by Attorney, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Attorney under this Agreement.
- (b) Commercial General Liability. Attorney shall maintain Commercial General Liability at a limit of liability not less than \$500,000.00 Each Occurrence. The County shall be named Additional Insured under Attorney's Commercial General Liability Policy. Attorney shall provide this coverage on a primary basis.

(c) Business Automobile Liability. Attorney shall maintain Business Automobile Liability at a limit of liability not less than \$500,000.00 Each Accident for all owned, non-owned and hired automobiles. In the event Attorney does not own any automobiles, the Business Automobile Liability requirement shall be amended allowing Attorney to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto coverage form. Attorney shall provide this coverage on a primary basis.

(d) Workers' Compensation Insurance & Employers Liability. Attorney shall maintain Workers' Compensation & Employers Liability in accordance with Florida Statute, Chapter 440. Attorney shall provide this coverage on a primary basis.

(e) Professional Liability. Attorney shall maintain Professional Liability or equivalent Errors & Omissions Liability at a limit of liability not less than \$1,000,000 Each Claim. When a self-insured retention (SIR) or deductible exceeds \$25,000.00, County reserves the right, but not obligation, to review and request a copy of Attorney's most recent annual report or audited financial statement. For policies written on a "Claims-Made" basis, Attorney shall maintain a Retroactive Date prior to or equal to the effective date of this Agreement. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims-made" form. If coverage is provided on a "claims-made" form, the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage. Attorney shall provide this coverage on a primary basis.

(f) Additional Insured. Attorney shall endorse the County as an Additional Insured with a CG 2026 Additional Insured – Designated Person or Organization endorsement, or its equivalent, to the Commercial General Liability. The Additional Insured endorsement shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida,

its Officers, Employees and Agents.” Attorney shall provide the Additional Insured endorsements coverage on a primary basis.

(g) Waiver of Subrogation. Attorney hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss contract to waive subrogation without an endorsement to the policy, then Attorney shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of rights of Recovery Against Others, or its equivalent. The Waiver of Subrogation requirement shall not apply to any policy, which specifically prohibits such an endorsement, or which voids coverage should Attorney enter into such a contract on a pre-loss basis.

(h) Certificate(s) of Insurance. Prior to execution of this Contract, Attorney shall deliver to the County’s representative a Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Contract have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. The certificate of insurance shall be issued to:

Palm Beach County
c/o Palm Beach County Attorney’s Office
300 North Dixie Highway, Suite 359
West Palm Beach, FL 33401
Attn: Anne Helfant, Esq.

(i) Umbrella or Excess Liability. If necessary, Attorney may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employer’s Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an aggregate limit not less than the highest “Each Occurrence” limit for either Commercial General Liability, Business Auto Liability, or Employer’s Liability. The

County shall be specifically endorsed as an “Additional Insured” on the Umbrella or Excess Liability, unless the Certificate(s) of Insurance notes the Umbrella or Excess Liability provides coverages on a “Follow-Form” basis.

(j) Right to Review. County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

11. Attorney shall indemnify, hold harmless and defend County, its agents, servants and employees from and against any and all claims, liability, losses and causes of actions which may arise by virtue of any intentional or negligent act or omission of Attorney or any agent, member, partner associate or employee thereof in the performance of the Legal Services.
12. Attorney represents that it has, or will secure at its own expense, all necessary personnel required to perform the Legal Services as required herein. Such personnel shall not be employees of or have any contractual relationship with County. The Legal Services shall be performed by Attorney or under its supervision and all personnel engaged in performing the Legal Services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. Attorney warrants that the Legal Services shall be performed by skilled and competent personnel to the highest professional standards.
13. Attorney’s signature on this Agreement shall act as the execution of a truth in negotiation certificate certifying that the wage rates and costs used to determine the compensation provided for this Agreement are accurate, complete and current as of the date of this Agreement.

14. (a) Attorney represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Legal Services, as provided in the standards set forth in Part III of Chapter 112, Florida Statutes. Attorney further represents that no person having such a conflicting interest shall be employed by Attorney to perform the Legal Services.

(b) Attorney shall promptly notify County in writing of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence Attorney's judgement or quality of the Legal Services. The notice shall identify the prospective business association, interest or circumstance and the nature of the work that Attorney wants to undertake and request County's opinion as to whether the association, interest or circumstance would, in the opinion of County, constitute a conflict of interest if entered into by Attorney. County agrees to notify Attorney of its opinion within thirty (30) days of receipt of notification by Attorney. If, in the opinion of County, prospective business association, interest or circumstance would not constitute a conflict of interest by Attorney, County shall so state in its opinion, and the association, interest, or circumstance shall not be deemed to be a conflict of interest with respect to the Legal Services. Attorney further agrees to comply with Palm Beach County PPM #CW-O-052 regarding outside counsel conflicts of interest.

15. Attorney is, and shall be, in the performance of the Legal Services, an independent contractor and not an employee of County. All persons engaged in the Legal Services performed by Attorney pursuant to this Agreement, shall at all times, and in all places, be subject to Attorney's sole discretion, supervision and control. Attorney shall exercise control over the means and manner in which it and its employees perform the work.

Attorney does not have the power or authority to bind County in any promise, agreement or representation other than as specifically provided for in this Agreement.

16. Attorney warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Attorney, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Attorney, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.
17. Attorney warrants and represents to County that all of its employees are treated equally during employment without regard to race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information. Attorney has submitted to County a copy of its non-discrimination policy which is consistent with the above, as contained in R-2014-1421, as amended, or in the alternative, if Attorney does not have a written non-discrimination policy, it has acknowledged through a signed statement provided to County affirming their non-discrimination policy conforms to R-2014-1421, as amended.
18. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be originally filed and later held in Palm Beach County. No remedy herein conferred upon the parties is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other further exercise thereof.

19. All written notices required in this Agreement shall be sent by certified mail, return receipt request. If sent to County, the notice shall be mailed to:

County Attorney
Palm Beach County
301 North Olive Avenue, Suite 601
West Palm Beach, Florida, 33401
ATTN: Anne Helfant, Esq

If sent to Attorney, the notice shall be mailed to:
Kaplan Kirsch & Rockwell LLP
1675 Broadway, Suite 2300
Denver, CO 80202
ATTN: Peter Kirsch, Esq

20. The forgoing terms and conditions constitute the entire agreement between the parties hereto and any representation not contained herein shall be null and void and of no force or effect. Further, this Agreement may be amended only in writing upon mutual consent of the parties hereto.

21. All exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

22. No provision of this Agreement is intended to, or shall be construed to create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including, but not limited to any citizen or employees of the County and/or Attorney.

23. Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 – 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Attorney, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and

detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-241 – 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

24. If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such terms or provisions, to persons or circumstances other than as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
25. Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Attorney: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Attorney shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time the Attorney is specifically required to:
 - (a) Keep and maintain public records required by the County to perform services as provided under this Agreement.
 - (b) Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Attorney further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

(c) Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of this Agreement, if the Attorney does not transfer the records of the public agency.

(d) Upon completion of this Agreement Attorney shall transfer, at no cost to the County, all public records in possession of Attorney unless notified by the County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If Attorney transfers all public records to the County upon completion of this Agreement, Attorney shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If Attorney keeps and maintains public records upon completion of this Agreement, Attorney shall meet all applicable requirements for retaining public records. All records stored electronically by Attorney must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to the County.

(e) Failure of Attorney to comply with the requirements of this section shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Attorney acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF ATTORNEY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ATTORNEY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC

AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY EMAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

26. This Agreement shall be effective upon execution by the Palm Beach County Board of County Commissioners and shall apply to Legal Services performed after September 12, 2017, and shall terminate two (2) years from the effective date of this Agreement. At the sole option of County, this Agreement may be renewed by County upon no less than thirty (30) days written notice to Attorney prior to the then current term for up to two (2) additional two (2) year periods upon the same price, terms and conditions as set forth herein.

The remainder of this page is intentionally left blank.

In Witness Whereof, the parties hereto have duly executed this Agreement on the day and year first above written

ATTEST:
SHARON R. BOCK
Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA BY ITS
BOARD OF COUNTY COMMISSIONERS

Deputy Clerk

Paulette Burdick, Mayor

APPROVED AS TO FORM & LEGAL SUFFICENCY

Anne Helgert
County Attorney

WITNESS:
By: [Signature]
Signature
By: Susan Miller
Signature

ATTORNEY:
Kaplan Kirsch & Rockwell LLP
By: [Signature]
Peter Kirsch, Esq

Exhibit A

Peter Kirsch	\$450.00
John Putnam	\$400.00
W. Eric Pilsk	\$400.00
Associates	\$275 – 300.00
Law Clerks	\$125.00